

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

BRIAN E. TROTTER, ) 8:10CV182  
 )  
 Plaintiff, )  
 )  
 v. ) **MEMORANDUM  
 AND ORDER**  
 )  
 STATE OF NEBRASKA, )  
 )  
 Defendant. )

Plaintiff filed his Complaint in this matter on May 10, 2010. (Filing No. [1](#).) Plaintiff has previously been given leave to proceed in forma pauperis. (Filing No. [7](#).) The court now conducts an initial review of the Complaint to determine whether summary dismissal is appropriate under [28 U.S.C. §§ 1915\(e\)](#) and [1915A](#).

***I. SUMMARY OF COMPLAINT***

Plaintiff filed his Complaint on May 10, 2010, against the State of Nebraska. (Filing No. [1](#) at CM/ECF p. 1.) Plaintiff is currently confined in the Douglas County Correctional Center in Omaha, Nebraska. (See Docket Sheet; Filing No. [1](#) at CM/ECF p. 2.)

Condensed and summarized, Plaintiff alleges he is currently being held on false charges for a crime he did not commit. (Filing No. [1](#) at CM/ECF p. 3.) Plaintiff seeks \$500,000.00 in monetary damages for emotional distress, defamation of character and false imprisonment. ([Id.](#) at CM/ECF p. 5.)

## ***II. APPLICABLE LEGAL STANDARDS ON INITIAL REVIEW***

The court is required to review prisoner and in forma pauperis complaints seeking relief against a governmental entity or an officer or employee of a governmental entity to determine whether summary dismissal is appropriate. *See 28 U.S.C. §§ 1915(e) and 1915A*. The court must dismiss a complaint or any portion thereof that states a frivolous or malicious claim, that fails to state a claim upon which relief may be granted, or that seeks monetary relief from a defendant who is immune from such relief. *28 U.S.C. § 1915(e)(2)(B); 28 U.S.C. § 1915A*.

A pro se plaintiff must set forth enough factual allegations to “nudge[] their claims across the line from conceivable to plausible,” or “their complaint must be dismissed” for failing to state a claim upon which relief can be granted. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 569-70 (2007); *see also Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1950 (2009) (“A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”). Regardless of whether a plaintiff is represented or is appearing pro se, the plaintiff’s complaint must allege specific facts sufficient to state a claim. *See Martin v. Sargent*, 780 F.2d 1334, 1337 (8th Cir. 1985). However, a pro se plaintiff’s allegations must be construed liberally. *Burke v. North Dakota Dep’t of Corr. & Rehab.*, 294 F.3d 1043, 1043-44 (8th Cir. 2002) (citations omitted).

## ***III. DISCUSSION OF CLAIMS***

Claims relating to the validity of an individual’s incarceration may not be brought in a civil rights case, regardless of the relief sought. As set forth by the Supreme Court in *Preiser v. Rodriguez*, 411 U.S. 475 (1973), and *Heck v. Humphrey*, 512 U.S. 477 (1994), if success on the merits of a civil rights claim would necessarily implicate the validity of a prisoner’s conviction or continued confinement, the civil rights claim must be preceded by a favorable outcome in habeas corpus or similar

proceeding in a state or federal forum. Absent such a favorable disposition of the charges or conviction, a plaintiff may not use [42 U.S.C. § 1983](#) to cast doubt on the legality of his conviction or confinement. *See Heck, 512 U.S. at 486-87; see also Smith v. Holtz, 87 F.3d 108, 113 (3d Cir. 1996)* (applying *Heck* to a claim that would implicate the validity of a future conviction on a pending criminal charge).

Here, Plaintiff alleges he is currently being held on false charges for a crime he did not commit. (Filing No. [1](#) at CM/ECF p. 3.) This allegation necessarily implicates the validity of Plaintiff's current confinement. As set forth above, the court cannot address this claim in an action brought pursuant to [42 U.S.C. § 1983](#). However, the court will dismiss Plaintiff's Complaint without prejudice to reassertion in a habeas corpus or similar proceeding.

IT IS THEREFORE ORDERED that:

1. Plaintiff's Complaint (filing no. [1](#)) is dismissed without prejudice.
2. A separate judgment will be entered in accordance with this Memorandum and Order.

DATED this 4<sup>th</sup> day of June, 2010.

BY THE COURT:  
*Richard G. Kopf*  
United States District Judge

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